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10 chapter 7 trustee for Esynergies Xceed, Inc.

11
12 UNITED STATES BANKRUPTCY COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 LOS ANGELES DIVISION
15

16 In re

17 ESYNERGIES XCEED, INC.,

18 Debtor.

19 Case No. LA 02-12580-VZ

20 Chapter 7

21 NOTICE OF INTENT TO SELL CERTAIN OF
22 DEBTOR'S INTELLECTUAL PROPERTY
23 PURSUANT TO SECTION 363(b)(1) OF THE
24 BANKRUPTCY CODE

25 [Local Bankruptcy Rule 6004-1]

26 Original Hearing Date:

27 Date: September 16, 2004

28 Time: 10:00 a.m.

New Hearing Date:

Date: September 16, 2004

Time: 10:00 a.m.

Place: 333 South Hope Street
35th Floor
Los Angeles, CA 90071

1 TO THE HONORABLE VINCENT P. ZURZOLO, UNITED STATES BANKRUPTCY JUDGE,
2 THE UNITED STATES TRUSTEE, AND PARTIES IN INTEREST:

3 PLEASE TAKE NOTICE that on September 20, 2004 at 10:00 a.m., at the law offices of
4 SulmeyerKupetz, 333 South Hope Street, 35th Floor, Los Angeles, CA 90071, Howard M. Ehrenberg,
5 the chapter 7 trustee (the "Trustee" or "Ehrenberg") of Esynergies Xceed, Inc. ("Xceed") will conduct
6 a sale (the "Sale") of all of the Xceed bankruptcy estate's interest, if any, in the following intellectual
7 property (the "Intellectual Property"):

- 8 • The "Xceed" trademark and trademark registrations for the United States of
9 America (including, the trademark registrations listed on Exhibit "1" attached
10 hereto);
- 11 • Any and all rights to use the trademark, trade name or service mark "Xceed" in
12 the United States of America and Canada;
- 13 • The goodwill connected with the use of and symbolized by the trademark
14 "Xceed" throughout the United States of America and Canada in perpetuity, and
15 all income, royalties, damages and payments now or hereafter due or payable with
16 respect to said trademarks and all causes of action (either in law or in equity)
17 related to said trademarks, including the right to sue, counterclaim and recover for
18 past, present or future infringement of said marks;
- 19 • The "Xceed.com" domain name; and
- 20 • The "Xceed.com" website architecture.

21 PLEASE TAKE FURTHER NOTICE that the estate's interest in the Intellectual Property is
22 being transferred "as is, where is" without any representation or warranty whatsoever.

23 PLEASE TAKE FURTHER NOTICE that the Trustee has received an offer from Xavier
24 Roy ("Buyer") to purchase the Intellectual Property for \$2,500 in cash (the "Purchase Price").
25 Subject to overbids, Buyer shall pay the Purchase Price in cash at the closing of the Sale ("Closing"),
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1 which shall occur within two business days after the Sale is concluded. At Closing, the Trustee shall
2 transfer to Buyer all of Xceed's right, title and interest in the Intellectual Property.

3 **PLEASE TAKE FURTHER NOTICE** that the Trustee has established the following
4 procedures for the sale of the Intellectual Property to Buyer:

5 A. Qualified Overbids. The Trustee shall consider qualified overbids for the Intellectual
6 Property ("Qualified Overbids"), but shall not consider proposed bids that are not Qualified Overbids.
7 In order for a proposed bid to be deemed a Qualified Overbid, a proposed overbid must meet each of
8 the criteria set forth in the following subparagraphs 1 through 5:

9 1. Timing. All of the documents and information required to be submitted
10 pursuant to subparagraphs 2 through 5 must be received by the Trustee at or prior to the Sale (the
11 "Overbid Deadline"). Unless a bid containing all of the required documents and information is
12 submitted by the Overbid Deadline, it will not constitute a Qualified Overbid.

13 2. Initial Bid Amount. In order to be a Qualified Overbid, the bid must be not
14 less than \$3,000 due in cash at Closing.

15 3. Deposits. In order to be a Qualified Overbid, any overbid must be
16 accompanied by a deposit in cash or cashiers' check payable to "Howard M. Ehrenberg as chapter 7
17 trustee for Esynergies Xceed, Inc." in the amount of the initial overbid and therefore in the amount of
18 no less than \$3,000 (the "Deposit"). The Trustee shall hold all Deposits in a segregated account. The
19 Deposit shall be nonrefundable in the event that the winning bidder fails to close for any reason other
20 than the default of the Trustee. The Trustee shall return a Deposit to a bidder as soon as practicable
21 after the earlier to occur of (i) the Trustee's determination that a bid is not a Qualified Overbid, (ii)
22 notification from the bidder prior to the commencement of the Sale that the bidder does not intend to
23 participate in the Sale, and (iii) the Closing of a sale to another party. The Deposit is waived for
24 Buyer and all overbids by Buyer shall be considered Qualified Overbids.

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1 4. Deemed Consent to Procedure. By bidding at the Sale, a party shall be deemed
2 to have consented to the terms and procedures set forth in this Notice.

3 5. Offers Irrevocable. In order to be a Qualified Overbid, each bidder agrees that
4 its highest bid will remain open and irrevocable until the Sale has concluded.

5 B. Qualification and Disqualification of Bids. Immediately prior to the Sale, the Trustee
6 shall determine whether each bidder has submitted a Qualified Overbid and shall so inform each
7 bidder whether it has submitted a Qualified Overbid.

8 C. Resolution of Disputes. Any disputes concerning whether a bidder submitted a
9 Qualified Overbid shall be resolved by the Trustee at the Sale. Any dispute that is not resolved by
10 the Trustee at the Sale shall be resolved by the Bankruptcy Court pursuant to a noticed motion.

11 D. Auction if Qualified Bids. If the Trustee determines at the time of the Sale that there
12 are one or more Qualified Overbids, at the Sale the Trustee shall hold an auction (the "Auction") for
13 the Intellectual Property in accordance with the following:

14 1. Only persons or entities that submitted Qualified Overbids may participate in
15 the Auction;

16 2. Buyer and Qualified Overbidders may participate in the Auction in person or
17 by telephone (upon request to the Trustee, dial-in information will be provided to interested bidders
18 prior to the Sale);

19 3. The Trustee may continue the Auction to a later date without further notice
20 other than an announcement at the Auction;

21 4. Prior to commencing the Auction, the Trustee shall confirm which bidders
22 intend to participate in the Auction. All bidders shall have the right to withdraw their Qualified
23 Overbids prior to the commencement of the Auction;

24 5. After determining which bidders intend to participate in the Auction, the
25 Trustee shall commence the Auction by announcing which of the participating Qualifying Overbids
26 is, in his determination, the highest and best offer. In making this determination, the Trustee shall
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1 have the right to consider, among other things, the likelihood of the bidder's ability to close a
2 transaction and the timing thereof.

3 6. At the Auction, further overbids must be in increments of at least \$500.

4 7. At the conclusion of the Auction, the Trustee shall announce which of the bids
5 is, in his determination, the highest and best offer and that bid will be the winning bid. Any disputes
6 as to the winning bid shall be resolved by the Bankruptcy Court pursuant to a noticed motion.

7 E. Results If No Qualified Bids. If the Trustee determines that there are no Qualified
8 Overbids, or if all of the persons or entities that submitted Qualifying Overbids withdraw their
9 respective Qualifying Overbids prior to the commencement of the Auction, the Trustee shall sell the
10 Intellectual Property to Buyer pursuant to the terms set forth above.

11 F. Result if Winning Bidder Fails to Close. In the event that the highest bidder fails to
12 timely close, the Trustee may, at his sole and absolute discretion, sell the Intellectual Property to the
13 second highest bidder for the amount of the second highest bid.

14 G. Quitclaim Bill of Sale. The Trustee is selling the Intellectual property "as is, where is"
15 with no representation or warranty. The Trustee shall furnish the buyer with a Quitclaim Bill of Sale
16 in the form attached hereto as Exhibit "2".

17 **PLEASE TAKE FURTHER NOTICE** that the statutory predicates for the relief requested
18 herein are sections 105 and 363(b)(1) of the Bankruptcy Code, Rule 6004(a) of the Federal Rules of
19 Bankruptcy Procedure, and Local Bankruptcy Rule 6004-1(b).

20 **PLEASE TAKE FURTHER NOTICE** that, unless an objection is timely filed, pursuant to
21 Local Bankruptcy Rule 6004-1, there will be no Order of the Bankruptcy Court approving the Sale.

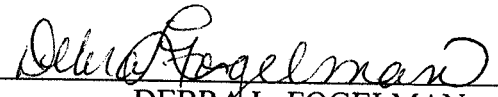
22 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 6004-1(b),
23 any (i) objection to the foregoing or (ii) request for hearing, must be in writing, filed with the Court
24 and served upon special counsel for the Trustee at the address set forth in the upper left-hand corner
25 of the first page hereof no later than fifteen (15) days from the date of service of this Notice.

26 Pursuant to Local Bankruptcy Rule 6004-1(b), if no objection and request for hearing is timely filed
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1 and served, the Trustee may sell the Intellectual Property to Buyer or a Qualified Overbidder on the
2 date specified above.

3 Dated: August 27, 2004

MICHAEL B. LUBIC
CHRISTOPHER E. PRINCE
DEBRA L. FOGELMAN
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By 
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